IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

IN RE:	§	
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ELITE BAYWOOD, LP	§	**CASE NO. 10-31760-H1-11**
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ARTHUR SQUARE APARTMENTS, LP	§	**CASE NO. 10-31774-H2-11**
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	§	**(Chapter 11)**
DEBTORS	§	**Joint Administration Requested**

EMERGENCY MOTION
FOR APPROVAL OF INTERIM AND FINAL USE OF CASH COLLATERAL

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THIS MOTION SEEKS AN ORDER THAT MAY ADVERSELY AFFECT YOU. IF YOU OPPOSE THE MOTION, YOU SHOULD IMMEDIATELY CONTACT THE MOVING PARTY TO RESOLVE THE DISPUTE. IF YOU AND THE MOVING PARTY CANNOT AGREE, YOU MUST FILE A RESPONSE AND SEND A COPY TO THE MOVING PARTY. YOU MUST FILE AND SERVE YOUR RESPONSE WITHIN 20 DAYS OF THE DATE THIS WAS SERVED ON YOU. YOUR RESPONSE MUST STATE WHY THE MOTION SHOULD NOT BE GRANTED. IF YOU DO NOT FILE A TIMELY RESPONSE, THE RELIEF MAY BE GRANTED WITHOUT FURTHER NOTICE TO YOU. IF YOU OPPOSE THE MOTION AND HAVE NOT REACHED AN AGREEMENT, YOU MUST ATTEND THE HEARING. UNLESS THE PARTIES AGREE OTHERWISE, THE COURT MAY CONSIDER EVIDENCE AT THE HEARING AND MAY DECIDE THE MOTION AT THE HEARING.

REPRESENTED PARTIES SHOULD ACT THROUGH THEIR ATTORNEYS.

****EMERGENCY CONSIDERATION OF THIS MOTION IS BEING REQUESTED.**
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TO THE HONORABLE UNITED STATES BANKRUPTCY COURT:

Elite Baywood, LP and Arthur Square Apartments, LP (collectively "Debtors"), file this Emergency Motion for Approval of Interim and Final Use of Cash Collateral. The grounds for this motion are:

I. Jurisdiction

1. This Court has jurisdiction by virtue of 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding pursuant to 28 U.S.C. §§ 157(b)(2)(M).

II. Venue

2. As to Debtor Elite Baywood, LP, venue is proper in this district pursuant to 28 U.S.C. § 1408(1) because the Debtors' principal places of business have been located in this district for more than 180 days preceding the filing of these bankruptcy cases.

3. As to Debtor Arthur Square, LP, venue is proper pursuant to 28 U.S.C. § 1408(2) because its affiliate, Debtor Elite Baywood, LP is a debtor in a case pending before the U.S. Bankruptcy Court for the Southern District of Texas, Houston Division.

4. These chapter 11 bankruptcy cases were each filed on March 1, 2010 under chapter 11 of title 11 of the Bankruptcy Code, 11 U.S.C. §§101 *et seq*. (the "Bankruptcy Code"). The Debtors continue to operate their businesses and manage property as a debtors-in-possession pursuant to §§ 1107 and 1108 of the Bankruptcy Code.

5. No trustee or examiner has been appointed in the Debtors' bankruptcy cases and no official committee of unsecured creditors has been established.

III. Property & Operations

6. Debtor Elite Baywood, LP owns and operates an 81 unit residential apartment complex known as the Baywood Arms Apartments in Baytown, Texas. As of petition date, the occupancy rate is approximately 65%. Twenty-six of the units are in need of rehabilitation in the form of new carpet, tile, sheetrock, paint, appliances, and certain other "make ready" parts such as new light and bathroom fixtures.

7. Debtor Arthur Square Apartments, LP owns and operates a 226 unit residential apartment complex known as the Poole Avenue Apartment Homes in Port Arthur, Texas. As of petition date, the occupancy rate is approximately 65%. Ninety-two of the units are in need rehabilitation in the form of new carpet, tile, sheetrock, paint, appliances, and certain other "make ready" parts such as new light and bathroom fixtures.

8. The same individual is president of each Debtor's general partner.

9. Each bankruptcy case was filed to avoid foreclosure by First National Bank on Debtors' respective properties.

IV. Debt

10. First National Bank. Debtor Elite Baywood, LP is indebted to First National Bank pursuant to a $1.82 million note executed on or about June 11, 2007 (and as later modified by agreement), which note is secured by deed of trust of even date. The deed of trust purports to grant First National Bank a lien against, among other things, cash collateral.

11. Debtor Elite Baywood, LP estimates that First National Bank believes that at least $1,869,314.45 is presently due and owing.

12. Debtor Arthur Square Apartments, LP is indebted to First National Bank pursuant to a $5.9 million note executed on or about October 25, 2007 (and as later modified by agreement), which note is secured by deed of trust of even date. The deed of trust purports to

grant First National Bank a lien against, among other things, cash collateral.

13. Debtor Arthur Square Apartments, LP estimates that First National Bank believes that at least $6,508,882.46 is presently due and owing.

14. Tax and M&M liens. The public record reflects $44,400 in aggregate alleged mechanic/mechanics' liens and $176,000 in alleged ad valorem tax liens against the real property owned by Debtor Elite Baywood.

15. The public record reflects approximately $145,000 in aggregate alleged mechanic/materialmens' liens and $249,000 in tax liens against the real property owned by Debtor Arthur Square.

16. Unsecured debt. Debtor Arthur Square owes approximately $400,000 of unsecured debt, which includes approximately $160,000 owed to insiders.

17. Debtor Elite Baywood owes approximately $120,000 of unsecured debt, which includes approximately $45,000 owed to insiders.

V. Relief Sought

18. The Debtors request that the Court (i) grant interim authority to use the cash collateral of First National Bank in accordance with the terms and conditions set forth herein, the proposed budget ("Interim Budget")1, and the proposed order ("Interim Order"), (ii) set a final hearing on this motion after expiration of fifteen days, and (iii) at the final hearing, grant Debtors authority to use cash collateral on a final basis. 2

19. The Debtors further request that the Court approve Debtors' proposed adequate protection of First National Bank.

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1 Specifically, the column entitled "Thru March 19."

2 The proposed Interim Budget contemplates acquiring this Court's approval of the prepetition wages, as sought by Debtors' by a separately filed motion. If the Court does not grant such authorization, the proposed Interim Budget will correspondingly shrink.

V. Grounds for Relief

20. Bankruptcy Code section 363(c) provides, in relevant part:

> (c)(1) If the business of the debtor is authorized to be operated under section 721, 1108, 1203, 1204 or 1304 of this title and unless the court orders otherwise, the trustee may enter into transactions, including the sale or lease of property of the estate, in the ordinary course of business, without notice or a hearing, and may use property of the estate in the ordinary course of business without notice or a hearing.
> (2) The trustee may not use, sell, or lease cash collateral under paragraph (1) of this subsection unless—
> (A) each entity that has an interest in such cash collateral consents, or
> (B) the court, after notice and a hearing, authorizes such use, sale, or lease in accordance with the provisions of the section.

11 U.S.C. § 363(c)(1) & (2).

21. The Debtors have an immediate need to use cash collateral, including cash proceeds, to continue the operation of their businesses. Without such funds, the Debtors will not be able to pay costs and expenses, including, but not limited to, wages, salaries, rent, professional fees, general and administrative operating expenses, in the ordinary course of the Debtors' business.

22. The Debtors request interim authorization to use cash collateral as set forth in the attached Interim Budget until a final order granting further use of cash collateral can be entered. The Debtors are without sufficient funds, other than cash collateral, to operate for fifteen days of more until a final hearing can be held. Absent authorization to use cash collateral, the Debtors' inability to timely pay the costs and expenses of operations will result in immediate and irreparable harm to the assets of the two bankruptcy estates.

23. Because the Debtors' request for interim authorization seeks the use of only that amount of cash collateral as is necessary to avoid immediate and irreparable harm to the value of

their assets pending a final hearing, the request complies with Rule 4001(b)(2) and 6003 of the Bankruptcy Rules.

24. The Interim Budget itemizes the sources and uses of cash and provides a projection of cash receipts and expenditures. The Interim Budget includes a list of business expenses that are reasonable and necessary and that must be paid in order to continue Debtors' businesses until such time as a final hearing on Debtors' request to use cash collateral can be held.

25. The Debtors propose that any amounts listed in the Interim Budget that are unused in any week may be carried over and used by the Debtors in any subsequent week, on a line-item basis.

26. The Debtors also request that any amounts listed in the Interim Budget that are unused in any week for a particular line item may be used by the Debtors for any other line item in that given week so long as the aggregate total of all line items does not exceed the budgeted amount for that week.

27. Additionally, the Debtors propose to adequately protect First National Bank as follows: Granting replacement liens upon all cash and receivables that are the proceeds, product, offspring or profits of the First National Bank's pre-bankruptcy collateral. 11 U.S.C. 363(e). A determination of adequate protection is decided on a case-by-case basis, involving a consideration of the nature of the creditor's interest in the property, the potential harm to the creditor as a result of the property's decline in value and the method of protection." *In re Braniff Airways, Inc.* 783 F.2d 1283, 1286 (5th Cir. 1986). The purpose of adequate protection is to ensure that a secured party's economic position is not worsened because of the filing of a bankruptcy case. *In re DeSardi*, 340 B.R. 790, 804 (Bankr. S.D. Tex. 2006).

Prayer

The Debtors pray that the Court:

1) Set an emergency preliminary hearing on this motion;
2) Enter an interim order authorizing the use of cash collateral pursuant to the attached Interim Budget for 15 days;
3) Set a final hearing on this motion after expiration of the fifteen day notice period required by Bankruptcy Rule 4001;
4) At the final hearing, approve Debtors' final use of cash collateral; and
5) Approve the adequate protection proposed herein.

DATED: March 5, 2010

Respectfully submitted,

HOOVER SLOVACEK LLP

/s/ Edward L. Rothberg
/s/ Melissa A. Haselden
/s/ Annie E. Catmull

By: ____

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PROPOSED ATTORNEYS FOR DEBTORS